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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,788	10/30/2003	Michael J. Bullinger	10226.10US11	1146
23552 7590 01/28/2010 MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				
EXAMINER				
A. PHU DIEU TRAN				
ART UNIT		PAPER NUMBER		
3633				
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01/28/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/697,788

Applicant(s)

BULLINGER, MICHAEL J.

Examiner

PHI D. A

Art Unit

3633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/09/2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-25, 28 and 29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-25, 28-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Inventor's Patent Application
- 6) ☐ Other: _____

In view of the appeal brief filed on 11/9/2009, PROSECUTION IS HEREBY REOPENED. Rejections of the claims are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/DAVID DUNN/

Supervisory Patent Examiner, Art Unit 3636

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described

in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The newly added limitation of “continuously crimped” is not supported by the original specification. The limitation of “continuously crimped” was added in the amendment of 6/12/2008 and is considered NEW MATTER.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation of “continuous crimped” is indefinite as it is confusing. Applicant has not defined “continuous crimped” in the specification and it is unclear what would constitute a “continuous crimped”. Is a crimped of 1/2 inch or 1 inch or 10 feet, “a continuous crimped”? Is a “continuous crimped” defined by the beginning and the end of the crimped?

The claim is rejected as best understood.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 8, 11, 13-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Knudson (5845435).

Per claims 8, 11, 13-16, Knudson (figures 10-11) shows a seamless gutter and cover system comprising a gutter (96, seamless as it is made of one piece) formed from a first coil of material having a front face(97), a bottom and a rear portion (98) extending upward to a top segment, a cover (99) formed from a second coil of material, the cover extends over the gutter and has a debris separation portion (106) extending above the front face of the gutter, a lip portion (99a) extending upward and wrapping over the top segment (98a) of the gutter, the lip portion and the top segment of the gutter are pressed and fixed together along their length to form an integral gutter and cover assembly (the part 99a appears to press fit over part 98a and together forming an integral part), the gutter is made of a first material and the cover is made of a second material, the gutter and cover are permanently integrally connected together(unless someone uses forces to separate them, the gutter and cover are permanently integrally connected), mounting means for securing the system to the edge of the roof, the mounting means further comprising mounting hardware(75) for securing the system to the edge of the roof, the mounting hardware extends through a hole in the gutter and cover system (the system including part 131), the mounting means is repeatedly positioned at determined distances along the gutter and cover system (figure 9).

Per claims 17-21, Knudson (figures 10-11) shows a gutter and cover system comprising a gutter (96) formed from a first coil of material having a front face(97), a bottom and a rear portion (98) extending upward to a top segment, a cover system (99) formed from a second coil

of material, the cover extends over the gutter and has a debris separation portion (106) extending above the front face of the gutter, a lip portion (99a) extending upward and wrapping over the top segment of the gutter, the lip portion and the top segment of the gutter are pressed and fixed together along their length to form an integral gutter and cover assembly (the part 99a appears to press fit over part 98a and together forming an integral part), an internal support member (131) for reinforcing the gutter and the cover, the internal support member further comprising a debris separation support segment (108) juxtaposed to an underside of the debris separation portion of the cover and having a profile with an upper edge matching the debris separation portion of the cover (the curve of the support matches the curve of the cover), a rear portion (141) extending downward to a front face segment, fixation means (75) for securing the internal support member with respect to the gutter and cover system, the fixation means further comprising mounting hardware for securing the internal support member to the gutter and cover system, the mounting hardware (75) extends through a hole in the gutter and into a hole in the debris separation support segment (148), the internal support member is repeatedly positioned at determined distances along the gutter and cover system, the front face defines a continuously curved profile.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson (5845435) in view of Middleby (4263756).

Knudson shows a seamless gutter and cover system comprising a gutter formed from a first coil of material having a front face, a bottom and a rear portion extending upward to a top segment (98a), a cover (99) formed from a second coil of material, wherein the cover extends over the gutter and has a debris separation portion extending above the front face of the gutter, and a lip portion (99a) extending upward and wrapping over the top segment of the gutter, the top segment and the lip portion interlock.

Knudson does not show the top segment of the gutter and the flange/lip portion of the cover are continuously crimped together to interlock the top segment with the flange/lip portion.

Middleby discloses crimping of a panel edge (12) with a gutter recess (16) to assemble the structures together (col 1 lines 60-64).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Knudson's structure to show the top segment of the gutter and the flange/lip portion of the cover are crimped together to interlock the top segment with the flange/lip portion because crimping two attached structures together would enable the secured fastening of the structures together as taught by Middleby, and one having ordinary skill in the art would have found it obvious continuously crimp Knudson's modified structure as it provides enhanced secured attachment of the cover to the gutter along the attachment edge.

5. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson (5845435) in view of Wade and Richard ((6732477).

Knudson shows all the claimed limitations except for the first material comprising aluminum and the second material comprising copper.

Wade discloses a cover (10) made of copper (col 2 lines 1-4).

Richard discloses a gutter of aluminum.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Knudson's structure to show the first material comprising aluminum as taught by Richard and the second material made of copper as taught by Wade because it is well known in the art to form gutters out of aluminum as it provides for rust resistance and light weight, and having the cover made of copper as taught by Wade, would have been obvious to one having ordinary skill in the art as copper provides for strong light weight support while being rust resistance also.

6. Claims 9, 22, 24, 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson (5845435) in view of Beam (4604837).

Knudson shows all the claimed limitations including an internal support member (131) having a pooling segment profile (147) juxtaposed to an underside of the section of the cover, a rear portion (141) extending downward to a front face segment (134) except for the cover comprising a kinetic energy dispersion section intermediate the rear portion of the gutter and the debris separation portion of the cover.

Beam (figures 2-6) discloses a kinetic energy dispersion section (110, 140, 10, 48) intermediate the rear portion of the gutter and the debris separation portion of the cover to enable the slowing of rain water so that rain water would properly drain into the gutter, the dispersion sections being concave.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Knudson's structure to show the cover comprising a kinetic energy dispersion section intermediate the rear portion of the gutter and the debris separation portion of

the cover as taught by Beam because it would allow for the slowing of rain water so that rain water would properly drain into the gutter.

Per claims 22, 24, 28-29 Knudson as modified shows a concave pooling portion intermediate the rear portion of the gutter and the curving front portion of the cover.

7. Claims 23, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson (5845435) in view of Beam (4604837).

Knudson as modified shows all the claimed limitations except for the gutter front face defining a K-style or square profile.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Knudson's modified structure to show the gutter front face defining a K-style or square profile because it would have been an obvious matter of engineering design choice to have the face being K-style or square profile since applicant has not disclosed that the different profiles solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the front face being continuously curved.

Response to Arguments

Applicant's arguments with respect to claims 8-25, 28-29 have been considered but are moot in view of the new ground(s) of rejection.

With respect to applicant's argument to Knudson/102 rejection, the arguments are found not persuasive. The rejection is thus repeated, and the response to argument of 10/17/2008 still applies and repeated below.

With respect to applicant's assertion that Knudson not showing "part 99a press fit over part 98a" and not fixed together, examiner respectfully states the following. first of all, figure 11 is another embodiment showing a different version of the attachment of the cover to the gutter with the part 99a clearly shown press on part 98a. Secondly, the limitation of "pressed" appears to be a product by process limitation and given little patentable weight per MPEP 2113. thirdly, the reference shows the part 99a fixed to part 98a as claimed. Structures are fixed together laterally. Fourthly, although the reference discloses the cover may be removed, the cover is not necessary removed and unless pull apart, the parts 99a and 98a are permanently attached and fixed to each other.

With respect to claim 10, Knudson as modified, shows the cover and gutter crimped continuously to attach the parts together. The combination enables an easy, and quick way of securely attaching structures. With respect to the function of removability, examiner asserts that the combination still allows a person to remove the cover if desired. The crimping only makes the attachment of the parts together stronger. The crimped parts are still removable from each other if desired.

With respect to the limitation of "permanently integrally connected together" in claim 13, the reference shows the parts are permanently integrally connected together until forcefully pulled apart. There is nothing in the claim language that differentiate applicant's "permanently" from the "permanently" shown by the reference.

Applicant's arguments to claims 9, 22, 24 and 28-29, are also moot in view of the rejections set forth above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Phi D A/
Primary Examiner, Art Unit 3633

Phi Dieu Tran A

1/22/2010